IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

Bail Appl..No. 6136 of 2007()

CRLMC.1715/2007 of D.C & SESSIONS COURT,TRIVANDRUM
[CRIME NO.153/2007 OF KANJIRAMKULAM POLICE STATION]

.....

: PETITIONER/ACCUSED

MANIYAN, S/O.DASSAYYAN NADAR,
THERIVILA PUTHENVEEDU, NELLIMOODU,
KOTTAKAL VILLAGE, NEYYATTINKARA TALUK.

BY ADV. SRI.G.SUDHEER

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 16/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.6136 of 2007

Dated this the 16th day of October 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations for offences punishable inter alia under Sections 447, 392 and 354 I.P.C. The crux of the allegations against the petitioner is that he had trespassed into the property of the de facto complainant, a woman neighbour of his. He had allegedly assaulted her and outraged her modesty. It is further alleged that he had taken away a gold chain by use of force. That incident allegedly took place on 12/8/2007. Crime has been registered. Investigation is in progress. The petitioner apprehends imminent arrest.

2. According to the learned counsel for the petitioner, the allegations are totally false. On identical allegations, there was an earlier attempt to arrest the petitioner. The petitioner had approached the learned Sessions Judge for anticipatory bail. That application for anticipatory bail was dismissed as per order dated 8/8/2007, recording the submissions of the police that no case has been registered against the petitioner and that the de

facto complainant did not want any further action in the matter. Thereafter conveniently a fresh false allegation of an identical crime has been raised by the de facto complainant against the petitioner. The petitioner is innocent. Anticipatory bail may, in these circumstances, be granted to the petitioner, it is submitted.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the fresh incident that had taken place on 12/8/2007 has nothing to do with the earlier alleged incident. Emboldened by the fact that no crime has been registered in respect of the previous incident on the basis of the indulgent attitude and request of the de facto complainant, the petitioner has been emboldened to repeat the crime. Investigation does not reveal that the de facto complainant is not speaking the truth. The learned Public Prosecutor further submits that the petitioner has a record of criminal antecedents. He is involved in many theft cases, submits the learned Public Prosecutor.

4. Having considered all the relevant circumstances, I am unable to agree that this court can at this stage assume that

the allegations raised presently in this crime are not justified at all. In coming to this conclusion, I have taken note of all the relevant circumstances including the criminal antecedents of the petitioner. I agree with the learned Public Prosecutor that this is a fit case where the petitioner must appear before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal and ordinary course. I find no features in this case which can justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C.

5. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007